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OFFICE OF PETITIONS

In re Application of
Tomowaki Takahashi
Application No. 10/734,133
Filed: December 15, 2003
Attorney Docket No. 1539.1004REC

**DECISION ON
PETITION**

This is a decision on the second request for reconsideration under 37 CFR 1.182, filed July 9, 2004.

Application papers in the above-identified application were filed on December 15, 2003. However, on April 7, 2004, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application," notifying applicant that the application had not been accorded a filing date because a complete specification as prescribed by 35 U.S.C. 112 was missing and that the application was deposited without drawings.

A petition under 37 CFR 1.182 which sought to have December 15, 2003 accorded as the filing date of the application was filed April 16, 2004 and dismissed in a decision mailed June 7, 2004. That decision treated the specification and drawings as having been incorporated by reference from the prior application, 09/766,486, filed January 19, 2001 (issued February 24, 2004 as RE38438), pursuant to MPEP 201.06 (c). However, that petition was dismissed without prejudice, because it did not appear that copies of the complete application papers filed on December 15, 2003 had been filed with the petition filed April 16, 2004.

Subsequently, a request for reconsideration was filed June 10, 2004 and was dismissed in a decision dated July 2, 2004. That decision accorded the filing date of December 15, 2003 to the application but in view of the incorporation by reference the specification and drawings were not physically in the file on December but were construed as having been present upon filing, albeit in the file of another application, i.e., Application No. 09/766,486.

MPEP 201.06 (c) and an incorporation by reference permits an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (emphasis supplied). It appears now though that petitioner would rather rely on the post card receipt to corroborate the argument that the

specification and drawings were filed with the application papers on December 15, 2003.

In support, petitioner submits a "legible" postcard receipt in evidence thereof. The postcard receipt, identifies the application and acknowledges, inter alia, the number of specification pages to be 13 and drawings (Figures 1-15, 16A, 16B, 16C-28) and, bears a United States Patent and Trademark Office date-stamp of December 15, 2003. Further, the postcard receipt lacks any notation of non-receipt of any item listed.

Reliance upon the postcard receipt eliminates the need for filing an amendment and copies of the purportedly missing specification and drawings have also been submitted with the instant petition.

In view of the foregoing, the petition is **GRANTED**.

Given the basis for granting the petition, no petition fee is due and thus the petition fee in the amount of \$130.00 submitted April 14, 2004 will be refunded to deposit account no. 19-3935.

The petitions decision mailed July 2, 2004 is vacated and instead, this application is being returned to the Office of Initial Patent Examination for further processing with a filing date of December 15, 2003, using the application papers received in the Office on December 15, 2003 and the specification and drawings submitted on petition July 9, 2004.

Telephone inquiries regarding this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497. Please be advised that effective September 24, 2004, the telephone number for the Office of Petitions will be changed to (571) 272-3232.



Patricia Faison-Ball
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Office of Petitions